

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

19-CR-575 (FB)

United States Courthouse
Brooklyn, New York

5 -against-

December 19, 2019
2:30 p.m.

6 ANDREW CAMPOS,

7 Defendant.

8 -----x
9 TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL APPEAL
10 BEFORE THE HONORABLE FREDERIC BLOCK
UNITED STATES SENIOR DISTRICT JUDGE

11 APPEARANCES

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23 produced by computer-aided transcription.

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Rivka Teich CSR, RPR, RMR FCRR
Official Court Reporter

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(In open court.)

THE COURTROOM DEPUTY: All Rise. Criminal cause for bail appeal, United States of America V. Andrew Campos.

I would ask the parties to state your appearances.

MR. EDELMAN: Good afternoon, your Honor. Keith Edelman and Kayla Bensing.

THE COURT: Good afternoon.

MR. MAZUREK: Good afternoon, your Honor, Henry Mazurek and Ilana Haramati.

THE COURT: I should make a public disclosure that I recently married Mr. Edelman's father, and I had not seen him for 30 years before I did that. But I guess I do have that type of relationship with the family. I don't know Mr. Edelman at all. I met him briefly at the wedding.

MR. EDELMAN: I made a similar disclosure to defense counsel before.

THE COURT: If you have any problems, don't hesitate to let me know.

MR. MAZUREK: Thank you, your Honor. Your Honor, Mr. Campos is now with us.

THE COURT: I'm going to give this proper attention of course.

Let me ask the Government -- I should really first ask Mr. Mazurek, Judge Reyes of course conducted a hearing. I think that the transcript runs about 34 pages. He made

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1 findings. There was a lot that he considered, a lot of
2 material that had been presented. Give me the reasons why I
3 should not be similarly persuaded and why you think that Judge
4 Reyes was not correct.

5 I know I have to make de novo determinations, but
6 this is a good jumping-off point. We have a good Magistrate
7 Judge who gave a lot of time and attention to this. I don't
8 think it's likely, but I want to hear why you think he was
9 wrong.

10 Mr. Mazurek, you have the floor.

11 MR. MAZUREK: Thank you, Judge. There are a number
12 of things that I would like to raise as the reasons why a de
13 novo review here, your Honor, should find that the Government
14 has not met its burden under the Bail Reform Act is moving for
15 dangerousness as a reason for pretrial detention here.

16 As your Honor is aware, that burden is higher on the
17 Government when they move under dangerousness under clear and
18 convincing evidence. We've also moved for the tension based
19 on serious risk of future obstructive behavior.

20 I'll start by saying under the 3142(g) factors, the
21 Court has to review under the Bail Reform Act, your Honor.
22 One significant difference in the presentation that we made to
23 your Honor from the one that was made at the time of initial
24 presentment of Mr. Campos, is that the conditions that we have
25 proposed are more restrictive and also carry even greater

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1 moral suasion on this defendant. The bail properties and the
2 bail that we now propose is almost three times higher from
3 what was originally available to us at the time --

4 THE COURT: Mr. Edelman, is it the Government's
5 position there is no bail package at all that could possibly
6 be offered that would warrant letting him sit at home instead
7 of him sitting in jail?

8 MR. EDELMAN: That's correct, your Honor. We
9 believe, and we can go in more detail, we believe there are no
10 conditions the Court can impose that will reasonably ensure
11 Mr. Campos' compliance with all terms of release.

12 THE COURT: I don't know whether the Second Circuit
13 has ever come down and said that. I know that they don't
14 necessarily support the notion that a substantial bail package
15 is sufficient to justify releasing somebody from
16 incarceration. I don't think they ever said it's lights out
17 under all circumstances. You can educate me if I'm not
18 correct.

19 MR. EDELMAN: I believe the Second Circuit has said
20 that organized crime defendants pose a particular risk, such
21 that the elaborate bail packages that recreate what a prison
22 would be like except the defendant is at home are disfavored
23 particularly in these cases. The reason why --

24 THE COURT: There's a difference between disfavored
25 and saying under no circumstances. Can there ever be a bail

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1 package or conditions of release that will protect the public,
2 et cetera, et cetera?

3 MR. EDELMAN: I agree, your Honor. In this case
4 under these particular facts there are no set of conditions
5 that can do so. One of which, one of the primary reasons for
6 that is Mr. Campos' ties and high position in the Gambino
7 crime family.

8 THE COURT: I understand all of those things. I
9 want to know, as a legal matter, what the Second Circuit's
10 position is. I don't think they ever said that under no
11 circumstances can you give someone bail because they have are
12 member of the Gambino crime family.

13 MR. EDELMAN: It's not an automatic, if somebody is
14 a member of organized crime they automatically cannot be
15 granted bail. In fact, there are other members of organized
16 crime in this case that we've consented to because the facts
17 are different.

18 THE COURT: Because it's a fact-specific inquiry.
19 It's not all inclusive as a matter of law dynamic.

20 MR. EDELMAN: I agree.

21 THE COURT: Continue.

22 MR. MAZUREK: Thank you, your Honor. Just in quick
23 reply to what the Government mentioned about the cases that
24 they cited on page seven of our December 11 submission to the
25 Court, I think those cases are fairly distinguishable under

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1 the facts.

2 I agree with your Honor that I think that this case
3 has to be a fact-specific inquiry before you determine that
4 there no conditions that can satisfy the Court that Mr. Campos
5 would not be a danger or obstruct justice in future
6 proceedings here.

7 In fact, I do believe that the conditions -- let me
8 go back. What the Government is saying is that they want to
9 create a presumption that doesn't exist in the Bail Reform
10 Act. Their presumption is if you make charges that there is
11 an affiliation with organized crime or as a gang member, then
12 that should be a presumption against bail. The only
13 presumptions against bail are for the statutory offenses that
14 are identified in the Bail Reform Act, this is not one.

15 This is a case where there is a presumption for
16 bail. As your Honor is also aware, 3142(j), there is a
17 presumption of innocence throughout of these proceedings.

18 So what we've presented here, after a balancing of
19 the 3142(g) factors, we believe is an incredibly substantial
20 package of sureties that carry huge moral suasion on
21 Mr. Campos.

22 We included conditions that require him to be under
23 strict home detention under electronic monitoring.

24 THE COURT: Let me interrupt again. Tell me how
25 your bail package now differs from what was presented to Judge

1 Reyes.

2 MR. MAZUREK: We have additional suretors. We have
3 two sets of homes, family homes, close family friends who have
4 children still at their home. These people have known
5 Mr. Campos and his family for almost his entire adult life.
6 They carry -- the one family who is here, Mario Simone and his
7 wife, live in Nanuet, New York. They've come down to be here
8 today. They offered their family home, an equity value of
9 almost \$500,000 after mortgage on the property. Roger
10 Pagnelli and his wife Joanne live in Rye, New York, and have a
11 property that is worth close to equity value over \$3 million.
12 They have now come forward and said they are willing to put
13 their family home at stake in this case. In addition, Paul
14 Dembo, who is Mr. Campos' father-in-law, his wife's dad, is
15 here with his wife. They have agreed to put their home in the
16 Bronx, which is almost a million dollars in equity, as surety
17 for Mr. Campos' bail.

18 Your Honor, when we first appeared at the time of
19 the initial presentment, obviously the arrest was unannounced,
20 we gathered as much as we possibly could at that time. I made
21 a presentation for bail at that time.

22 Since then, even more people, the ones I've just
23 identified, have come forward and said they are willing to
24 speak and put their livelihoods, their biggest assets, their
25 family home on behalf of Mr. Campos. I think that this is

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1 significant and a substantial difference.

2 Also, one other thing, your Honor, is that what was
3 not immediately known to us or available or understood at the
4 time of the date of arrest, is that the Government presents
5 this substantial, this heavy-weighted Indictment of about 50
6 pages, that really required some parsing through, which I did
7 not originally have at the time an opportunity to do at the
8 initial presentment. As we indicated in our papers, this is a
9 largely economic crimes case.

10 THE COURT: There are allegations here of extortion
11 and threats of extortion and things that accompany that type
12 of dynamic. It's largely economic, but not 100 percent.

13 MR. MAZUREK: I said largely. You're absolutely
14 correct, your Honor, in your description of it. There is only
15 one count of extortion. That count of extortion as to my
16 client has thin evidence. The only evidence is based on the
17 testimony of a cooperating witness who is alleged to have
18 extorted.

19 THE COURT: Let me ask -- I go back and forth as
20 things pop into my head. When I first took the bench, I used
21 to say, "I don't mean to interrupt but," but then I realized I
22 do mean to interpret, that's what I'm supposed to do.

23 I'm trying to get a handle in the practical realm of
24 things as to what risks there really are if he's sitting at
25 home instead of jail. He's not in the SHU, so to speak. He's

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1 not detained that way. He has access to the general jail
2 population. He has people who are allowed to visit him. He
3 can talk to these folks privately. What is the real
4 difference between him sitting in jail and sitting at home? I
5 guess he would prefer the food at home than in jail, but what
6 else, really, do we have to worry about as a practical matter.
7 The use of the telephone I suspect is what you're going to
8 say, right?

9 MR. EDELMAN: That is one of the many risks I think
10 that are posed if the defendant is released versus in jail.

11 If Mr. Campos is in jail his visitors have to be
12 preapproved, we know who he is meeting with. His telephone
13 calls are recorded, his e-mails are recorded or downloadable
14 by the Government. So there is an extra strong layer of
15 protection that Mr. Campos is not going to continue to commit
16 crimes, as well as operate the affairs of the Gambino crime
17 family.

18 THE COURT: Let me stop you. Because I'm just not
19 as technically on top of the world as younger people are. The
20 technology is so fast-moving that it's hard to keep up with
21 it.

22 But isn't there means, for lack of a better word, to
23 bugging his home to hear exactly what goes on while he's
24 sitting at home?

25 MR. EDELMAN: I believe that is probably

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1 technologically feasible. I'm not -- that's something that
2 pretrial --

3 THE COURT: I'm exploring these things. There is
4 the presumption of innocence. We understand that someone who
5 is charged with being a capo of a crime family, there is a lot
6 of demonizing that goes along with that and imagery. I
7 understand all that. I had the Peter Gotti trial.

8 MR. MAZUREK: I was there too, working with Gerry
9 Shargel.

10 THE COURT: I remember that.

11 As a practical matter, a real risk of danger, if we
12 do have this technical capacity to find out what he's doing at
13 home. The only difference between him and the home is the
14 food I guess and the creature comforts of being at home
15 instead of jail. If we can find out exactly what he's doing
16 while at home, I imagine we can find that out, or that is
17 something that is not so difficult to ascertain.

18 Am I technologically off-base or is it something to
19 inquire about?

20 MR. EDELMAN: Perhaps something we can inquire
21 about, but it's still insufficient. There are still many
22 other means that Mr. Campos can commit crimes, speak to
23 people --

24 THE COURT: Give me an idea. He can speak to people
25 in jail. He's going to have visitors. He knows people can

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1 easily be conduits to give information to other people. That
2 doesn't impress me too much. What else?

3 MR. EDELMAN: Sure. If he's at home someone can
4 purchase for him, or he can purchase, a one-time usable
5 cellphone that we're not going to have any inkling of what the
6 number is, who he's speaking to, he will be able to
7 communicate with others.

8 THE COURT: So stop, cellphones I guess will be
9 something. I'm trying to find out what we have to be
10 realistically concerned about instead of theoretically.

11 MR. EDELMAN: I don't think it's technologically
12 feasible to bug every area of his house. If he wanted to have
13 an illicit conversation, he and the person who comes over or
14 him on a cellphone can go the bathroom or the basement or some
15 area. I don't know if that's ever going to be practical to
16 implement.

17 THE COURT: I don't know. I don't know. But we
18 have such technology, this could be taken care of. When you
19 couple that with considering the fact that there are folks
20 that are going to lose their home and the family resides at
21 their home, he really has an awful lot to lose in terms of
22 losing face with his family if he causes them to lose their
23 homes.

24 Do you think it's a powerful consideration? I'm not
25 giving kudos for the allegations against him. I'm going to be

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1 presiding over the trial, and I'll be dealing the sentence
2 appropriately if convicted. But at the same time, I think
3 there has to be a sense of overriding fairness and decency of
4 these cases as well. When they have these folks who can lose
5 their home, my sense is that he's not going to want to run
6 that risk. I may be wrong. I think this cuts a little
7 deeper.

8 MR. EDELMAN: Two responses. One, your Honor, is,
9 yes, that is a factor, that is something for your Honor to
10 consider. But also the fact that he's got a lot to lose by
11 virtue of this case. He has his liberty to lose for a very
12 long period of time.

13 And he's shown in the obstruction allegations, he's
14 shown he has taken methods to obstruct the ongoing
15 investigation. So he's already taken efforts to try to help
16 himself to reduce his liability as much as possible.

17 THE COURT: How specifically has he done that?

18 MR. EDELMAN: Two allegations that we detailed in
19 our papers. The first is Mr. Campos learned that someone
20 testified in the Grand Jury, and what Mr. Campos did in
21 retaliation because that person chose to testify.

22 THE COURT: I don't think there were any threats or
23 harm visited upon that person. I may be wrong.

24 MR. EDELMAN: Economic harm. He had him taken off
25 of work. That person testified rather than take the Fifth.

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1 THE COURT: It was an economic situation, not a
2 violent situation. Go ahead.

3 MR. EDELMAN: Second iteration is Mr. Campos, as
4 well as another co-defendant, directed someone to lie to
5 falsely take responsibility for some of the crimes that they
6 committed together. And in return, would be paying for his
7 legal expenses and financial penalties.

8 THE COURT: He could do that while he's in jail as
9 well.

10 MR. EDELMAN: In jail no one is going to say there
11 is a zero risk, but that is the best possible way of
12 minimizing risk.

13 THE COURT: There is a lot of balls in the air here,
14 a lot of factors. I want to weigh them all and see how it
15 shakes out.

16 You want to response to that now, Mr. Mazurek?

17 MR. MAZUREK: With respect to the obstruction
18 evidence?

19 THE COURT: That and with respect to the fact that
20 if he's at home he may have more access to able to do bad
21 things than if he were in jail.

22 MR. MAZUREK: Let me say this, that the Bail Reform
23 Act says this is a presumption of bail case and actually
24 instructs the Court that it shall set bail based on the least
25 restrictive conditions to reasonably assure the Court against

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1 dangerousness or obstruction.

2 What I think your Honor has said regarding the kinds
3 of things that Mr. Campos is able to do in the home versus
4 jail, is quite similar. He obviously is allowed to get visits
5 at jail, allowed to speak with other inmates in jail. Even in
6 fact I have to say there have been cases that out of the MDC
7 where there is a lot contrabands found.

8 THE COURT: Bad things in jail too. I understand
9 that. What about the notion of using a technology? Would he
10 be amenable?

11 MR. MAZUREK: We would be willing. In fact it's
12 interesting that you note that, your Honor. We have another
13 case in the Southern District of New York where bail was set
14 for an individual where we've agreed to have the Government
15 have a monitored landline phone as a condition of bail and no
16 cellphones in the home.

17 THE COURT: How would you know whether that was
18 complied with, whether there is cellphones or not in the home?
19 How would you know that?

20 MR. MAZUREK: Well, your Honor, one of the -- there
21 is no fool-proof method of things. Just like you cannot have
22 a fool-proof method that inmates can't get access to --

23 THE COURT: Someone can visit, bring a cellphone and
24 that person would have access.

25 MR. MAZUREK: There would be a strong ground of

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1 deterrence on Mr. Campos' perspective because there is a moral
2 suasion that all of these people are putting up their homes.

3 THE COURT: How does the Government find out if he
4 had a cellphone and whether he was using it?

5 MR. MAZUREK: Again, I don't know that there can be
6 a fool-proof method to do it.

7 You're allowed to -- we could have pretrial have
8 unannounced visits to the home to have the ability to make
9 sure there are no cellphones in that location. The other
10 thing that we can do is limit of Internet access in the home.

11 THE COURT: That can be controlled. So pretrial
12 services is here I understand, yes?

13 MR. EDELMAN: Yes, Shavoy Akinson is here.

14 THE COURT: Would you like to step up here so I can
15 chat with you?

16 MR. AKINSON: Good afternoon.

17 THE COURT: You speak in a soft voice, I want to
18 make sure I hear you clearly.

19 So you heard me ask some questions just now. And
20 one of the things that crosses my mind with the technology we
21 have these days, whether we can have a comfort level that we
22 can employ that technology to guard against anything
23 happening. In the old days we didn't have it; we have it now.
24 I'm just wondering have you considered that? What can happen
25 at home, what we can do to provide listening devices or TV

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1 monitors or anything of that nature? Is there anything like
2 that that we can consider here?

3 MR. AKINSON: Judge, I would say no, because that is
4 beyond the resources that we have here. Pretrial has --

5 THE COURT: I don't know whether it's appropriate
6 for the defendant to fund those resources.

7 MR. AKINSON: Judge, that's a question that I can't
8 answer. I never had that before.

9 THE COURT: Is there technology, aside from the
10 funds, that is available so we can actually create an
11 environment in the home where we can feel fairly comfortable
12 that nothing untoward is going to happen?

13 MR. AKINSON: There is no way to reasonably assure
14 that, your Honor. I want to add, though, that we could
15 monitor a cellphone, but again, we cannot reasonably assure
16 that there is no other cellphones in the house that he would
17 not have access to.

18 THE COURT: Is there any way of monitoring cellphone
19 use?

20 MR. AKINSON: Yes.

21 THE COURT: How?

22 MR. AKINSON: We install the necessary software on
23 it and it would be monitored remotely from our office. But --

24 THE COURT: Can you do that?

25 MR. AKINSON: Yes, judge. But we were not able to

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1 transcribe audio calls, from what I understand, only e-mails.

2 THE COURT: I'm trying to educate myself. You can
3 certainly put listening devices in the home.

4 MR. AKINSON: Not that I'm aware of. I can speak to
5 my supervisor.

6 THE COURT: They could be installed. Presumably the
7 Government is good at bugging places all the time.

8 MR. AKINSON: Maybe the Government, but not
9 Pretrial.

10 THE COURT: It's not your world, right?

11 MR. AKINSON: That's correct, Judge.

12 THE COURT: Now so from a technical point of view,
13 you don't have the knowledge to really interact with me about
14 what technology might be at our disposal to secure the home so
15 to speak.

16 MR. AKINSON: That's correct.

17 THE COURT: So I could talk to somebody else about
18 that, right?

19 MR. AKINSON: Yes.

20 THE COURT: I was curious whether you get involved
21 with this type of stuff.

22 MR. AKINSON: Not at all.

23 MR. MAZUREK: Judge --

24 THE COURT: If we could provide the technology, such
25 as listening devices or TV cameras or whatever, it happens all

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1 the time today, would that make a difference in how you feel
2 about this case?

3 MR. AKINSON: Judge, I'm unable to say right now. I
4 would have to consult with my supervisor.

5 THE COURT: Aren't you glad you came to court today?
6 You're not comfortable about that.

7 MR. AKINSON: I'm not comfortable about it at all.
8 I want to be able to, if there is a condition imposed, I would
9 stand in court confident knowing walking out we can monitor
10 it, reassure you that condition is being monitored
11 effectively.

12 THE COURT: It strikes me -- so I have a little baby
13 granddaughter, we have cameras all over the place. I can look
14 from here to find out what is going on at her home right now.
15 And it just struck me as, wow, we can do all these things, I
16 can see whether the babysitter is acting correctly, changing
17 her diapers properly, I can do all of that.

18 It just seems that we should have the ability to do
19 that in these types of cases when we confine people at home
20 instead of in prison. They have a presumption in their favor.
21 If we can really feel comfortable that they will be in the
22 home and we can watch them, why not do that?

23 MR. AKINSON: Judge, I hear you.

24 THE COURT: You don't want to take a --

25 MR. AKINSON: I hear you. Those technical

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1 advancements, we're not, that's not in our resources at this
2 point.

3 THE COURT: That's okay, that's why we talked about
4 it.

5 I don't want to make you feel even more
6 uncomfortable, you can sit down.

7 What do you think about that. I can see what is
8 going on my home right now.

9 MR. EDELMAN: I appreciate that, your Honor, but I
10 think we're at the point -- we're doing what the Second
11 Circuit said we should not be doing, which is trying to
12 recreate a prison-like environment, that essentially at bottom
13 still rests on trusting that the defendant will abide by the
14 conditions. Even one camera in one area of the home, there
15 will be other places the person will go. Mr. Campos lives in
16 a very large home, multiple children, the resources it would
17 require to sit and monitor --

18 THE COURT: What if the defendant were willing to
19 fund those resources?

20 MR. EDELMAN: I submit just the man-power of sitting
21 listening to hours and hours of conversation on the off-chance
22 that Mr. Campos drops his voice and goes into another room and
23 has a conversation he's not supposed to have. We're into the
24 sector of allowing a wealthy defendant to construct his own
25 prison. That is the sort of thing -- we detailed this in the

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1 letter that the Second Circuit --

2 THE COURT: The Court turns a thumb down on that.

3 But I'm curious, I'm trying to explore all of these
4 things, we have a modern world today of technology. Maybe
5 when the Bail Reform Act was initially created that technology
6 was not before Congress. Just like the statute is still on
7 the books that the Government has doesn't have to turn over
8 3500 material until the witness testifies; and now with
9 technology the 3500 could be five gigabytes. I think we
10 should update our thinking about what we can do in our modern
11 world to honor the law. And the law is that the defendant,
12 regardless of what trappings he comes with, is presumed
13 innocent.

14 So you can talk more about this, I'm just sharing
15 with you some of my thoughts.

16 Do you want to say anything else?

17 MR. MAZUREK: Yes, Judge. Look what Congress has
18 told us in the Bail Reform Act, that the Court is to impose
19 the least restrictive conditions that reasonably assure you
20 that there is no threat of dangerousness. It's not
21 100 percent assure, it's reasonably assure. And I think
22 that's important when we talk about what is available to the
23 Court.

24 THE COURT: Does your client realize if there is one
25 slip up, one phone call to somebody he should not be speaking

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1 to, anything at all, that all these folks are going to lose
2 their home. Does he realize that?

3 MR. MAZUREK: Yes, he does.

4 THE COURT: That will happen.

5 MR. MAZUREK: That has incredible moral suasion.
6 He's the father of four young daughters, 17 to 22. His mom
7 and wife are in court right now. His Mom's dad is willing to
8 put up her house. Two family friends, not even blood
9 relatives but people known him since he's a little kid and
10 trust him. He's not going to cause risk to these people.

11 He's had a prior case. In that case there was no
12 allegations of violence. And guess what, on pretrial release
13 he was 100 percent in compliance with his pretrial release for
14 over a year.

15 THE COURT: Should that be a factor in the past,
16 that he's complied with all sorts of pretrial releases?

17 MR. EDELMAN: A factor, but what I submit is after
18 Mr. Campos was released, while his co-defendant from that
19 case, Richard Martino, was on supervised release, he and
20 Mr. Martino had illicit meetings that were violating
21 Mr. Martino's supervised release.

22 They did the same type of activity that we're
23 concerned about now. They used I believe intermediaries to
24 set up meetings. They met in locations and would leave not at
25 the same time. Activities that show Mr. Campos was willing to

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1 help another evade the terms of his supervised release.

2 So while he himself may not have been violated, that
3 is a factor for your Honor to consider. It has also been
4 conclusively demonstrated he's willing to evade Court order
5 supervision at least for another person.

6 THE COURT: Do you want to continue?

7 MR. MAZUREK: There is no history of violence of
8 Mr. Campos. The allegations in the Indictment are what they
9 are. He's presumed innocent. We haven't seen the discovery.
10 There is one cooperator who said he was extorted, but who did
11 a lot of work and made tons of money with the CWC Construction
12 Company. The allegations involve the CWC Construction Company
13 which has now been brought out of business by the Government's
14 Indictment here. There is no longer any access that
15 Mr. Campos has to continue to be an economic threat for any of
16 the crimes charged here. That company is out of business.

17 There is no history of violence. There is no
18 history of directing violence. There is no direct evidence.
19 The Government has had, by their own admission, months and
20 months on wiretaps on cellphones. They had an oral bug in his
21 office for a few months. There is nothing that they've
22 reported in their detention memo to the Court with any
23 specific statements by Mr. Campos of violence.

24 Since Judge Reyes -- the original arrest in this
25 case -- three other defendants who the Government moved for

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1 detention were ordered bailed by three different Magistrate
2 Judges. Mark Kocaj, a co-defendant who was charged not only
3 in this Indictment but a second Indictment alleging specific
4 direct threats and extortion, which they have in his own words
5 on recordings was given a \$600,000 bail, home detention
6 secured by property.

7 THE COURT: Who was the Magistrate?

8 MR. MAZUREK: In that case it was Magistrate
9 Bulsara. Richard Martino, alleged to be a high-level member
10 of this Gambino crime family, went before a different
11 Magistrate, Magistrate Levy. Despite the fact that the
12 allegations of the Government were that Mr. Martino was
13 surveilled violating his supervised release conditions, issued
14 bail, \$4 million, secured by several properties, home
15 detention.

16 THE COURT: Martino is really, the allegations
17 against him are on par in many respects as the allegations
18 against Mr. Campos. He's on bail, why should he have to sit
19 in jail?

20 MR. EDELMAN: Important differences between
21 Mr. Martino and Mr. Campos. I do note this is over our
22 objection that Mr. Martino was released.

23 Martino is not charged in any extortion counts.
24 Mr. Campos is charged --

25 THE COURT: One.

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1 MR. EDELMAN: Two counts, but one victim.
2 Mr. Martino not charged with obstructing the investigation.
3 Mr. Campos is charged with one incident of obstructing the
4 investigation, and another yet uncharged instance in which
5 Mr. Campos obstructed the investigation. I submit those are
6 material differences. And Mr. Campos is a captain in the
7 crime family.

8 THE COURT: Well, Martino is way up there also.

9 MR. EDELMAN: He's alleged in the Indictment to be a
10 long-time powerful soldier, but a soldier.

11 MR. MAZUREK: His prior case, he had a prior case of
12 actual violence that he pled to, where Mr. Campos does not.

13 One other thing, just if can. There is another
14 defendant who the Government moved is not in this Indictment
15 but alleged have been one of the alleged thugs who committed
16 this violence Adrial Lopez is charged in a separate complaint,
17 extorted the cooperating witness in this case, allegedly.

18 The Government moved for his detention. My
19 understanding is, just this week, he was released on bail.
20 This guy, apparently the Government says has direct evidence
21 that he -- he had a prior criminal history of violence, and
22 they have direct evidence that he committed violence or
23 threatened violence against the same cooperating witness in
24 this case. Magistrate Judge Gold, a third Magistrate Judge,
25 released him \$600,000 bail, secured by property. I'm not sure

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1 whether he was given home detention or not. That happened two
2 days ago.

3 Three separate Magistrate Judges in this district
4 issued bail over the Government's claim that no conditions
5 could satisfy a Court about the risk of dangerousness. And
6 two of those individuals had direct evidence of violence, had
7 violence in their past criminal history, and they were allowed
8 to be released.

9 Look, I have huge respect, your Honor, for
10 Magistrate Reyes, but he's out-scored three to one in this
11 particular instance.

12 And the other problem that we have -- look, I'll
13 admit on the very first day I believed Andrew Campos was a
14 good candidate for bail. I had his family in the courtroom.
15 They were willing to put up their houses. I made a
16 presentation for bail.

17 Since that time we learned more about the case,
18 obviously. The benefit the other defense lawyers had for
19 Mr. Martino, Mr. Kocaj and Mr. Lopez, was after that they were
20 able to review the evidence, review the allegations, also
21 obtain a more substantial bail package.

22 We've now done the same thing. A big difference
23 from the day of the initial presentment when we first appeared
24 unannounced, and when Mr. Campos was woken at six morning, and
25 his family all made it to court by the afternoon in order to

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1 put up their houses.

2 THE COURT: First of all, I'm just curious, would he
3 be will to pay for cameras in his home, surveillance cameras?

4 MR. MAZUREK: I don't know how much it would be, but
5 a reasonable cost.

6 THE COURT: I have no idea. I want to explore
7 information today, to have the Government to check out this
8 bail proposal.

9 You want to check out the homes. You need some time
10 to do that, so it may weigh in my decision if you find this is
11 not an appropriate security then I want to know about them.
12 If you think it is, then I want to know that as well. I want
13 to get that information from the Government.

14 We're going to take our time to think about this a
15 little bit. I also want to you find out if there is any way
16 in which we can fund securing the premises. I'm thinking
17 automatically of my granddaughter's cameras. I don't think
18 they're that expensive. The Government doesn't have to watch
19 it all the time. The fact that it's there and Mr. Campos
20 knows in each room that the Government can tap into at any
21 time.

22 MR. MAZUREK: There are privacy concerns. There are
23 four young daughters at the home as well. I want to think
24 about that as well, your Honor. We believe that that kind of
25 level of surveillance is not necessary given his background

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1 and allegations here.

2 THE COURT: Think about it. I'm trying to put
3 everybody in motion to explore possibilities of how I can have
4 a comfort level in terms of letting him out of jail. That's
5 one thing that is crossing my mind; it may not be realistic.

6 MR. MAZUREK: I understand that, your Honor. I
7 respect that request.

8 Given the allegations here, this particular
9 defendant's background, lack of violence and lack of direction
10 of violence, I refer the Court to United States V. Persico
11 case, which I have personal knowledge of since I was one of
12 the, representing the defendant on that case in appeal in the
13 Second Circuit.

14 In that case the defendant Persico is alleged to be
15 a long-standing member of organized crime family. The appeal
16 was based on the fact that District Judge Townes misapplied
17 the Bail Reform Act by making a presumption of detention in a
18 case where the statute didn't apply for that. But in dicta,
19 it's interesting to note that what the Second Circuit stated
20 in that case that she also made findings of dangerousness
21 based on allegations of associations with an organized crime
22 family and when there was no evidence, direct evidence, that
23 the individual defendant before her had been involved in
24 violence, had threatened violence or had directed violence.
25 And that's very similar in this case.

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1 What the Government relies upon in this case is only
2 evidence of a co-defendant talking about Mr. Campos, but no
3 direct evidence that Mr. Campos ever directed violence in any
4 way. I know that's a decision down the road in terms of the
5 potential trial in this matter. But the weight of the
6 evidence is one of the 3142(g) factors for the Court to
7 consider.

8 Also, your Honor, it's important because that thin
9 piece of evidence, which is the only allegation of violence in
10 this entire case, the 51-page Indictment and the multiple
11 counts, which really just apply to tax, payroll, honest
12 services-type fraud, that thin piece of evidence is not enough
13 to detain a person, I would submit, under clear and convincing
14 standard.

15 The Paulino case that we cited in our papers says
16 that for clear and convincing evidence, the Court has to have
17 a high degree of certainty, not just that Mr. Campos may have
18 been involved in danger in the past, but that he would be a
19 danger in the future. If he --

20 THE COURT: Again, let me ask you this, what kind of
21 assurance do I have that he will not be able to have many
22 people come to visit his home and be able to conduct the
23 affairs, allegedly, of illicit activities?

24 MR. MAZUREK: It's the same as, there were
25 associational bars that were placed on Mr. Martino, the

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1 alleged high-ranking member of the Gambino family, on home
2 detention, associational bars. Look, co-defendants can meet
3 with their counsel, but they can't meet with anyone without
4 counsel present. Those kinds of things would be monitored
5 just the way they always are. Strict pretrial supervision,
6 unannounced visits to the home, and the Government's usual set
7 of resources.

8 But this is not the kind of case where there is an
9 allegation -- the organized crime cases cited by the
10 Government, which we distinguished in our papers, usually
11 involve murders, assaults and actual violence. There is no
12 actual violence in this case.

13 THE COURT: From looking at the papers, I'm going to
14 look at them more carefully in the next day or two, but what
15 does jump out, besides the one count of extortion which you
16 explained, there are no alleged acts of violence. And when
17 you see that type of Indictment, Mr. Edelman, I think the
18 judge should really carefully consider whether or not the
19 presumption of innocence and the fact that there is a
20 presumption to give bail should not be seriously considered.
21 I want you to know where my mind is at now.

22 What we're going to do, we're not going to race to
23 judgment. I want you to check out the bail package. Then you
24 can submit to me, if you want, any follow up papers and I'm
25 going to make a decision. I'm not going to do it today. I

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1 don't want to really, we have some things to think about here.

2 I'll try to get a decision out next week. I guess I
3 can go to January 16, but you may want a decision before then.
4 See whether you can submit something to me by next Wednesday.
5 Is that putting you under pressure?

6 MR. EDELMAN: That's Christmas.

7 THE COURT: That's the problem, we have the holiday
8 season.

9 MR. EDELMAN: We can do it by next Tuesday.

10 THE COURT: Next Tuesday.

11 MR. MAZUREK: Yes, your Honor, ideally we hoped for
12 a decision prior to the Christmas holiday.

13 THE COURT: I had a feeling that you would like me
14 to make a decision before Christmas.

15 MR. MAZUREK: Yes.

16 THE COURT: I get it. If can you get me stuff,
17 whatever else you want to submit to me, do it by Tuesday.

18 MR. MAZUREK: Can we submit by Monday?

19 THE COURT: Yes. I don't want to kill your weekend.

20 MR. MAZUREK: We'll kill our weekend to help our
21 client.

22 THE COURT: Let's do it Monday. I'll try to get a
23 decision out before Wednesday. I have a lot to think about.
24 I want to go over your papers more carefully and check out the
25 bail package.

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1 MR. EDELMAN: Understood.

2 MR. MAZUREK: And check out the cases that we cited
3 in terms of the other co-defendants.

4 THE COURT: We've had a nice discussion. I think
5 this is the way I should conduct these proceedings. And if
6 there is anything else you wish to say, let me go to work.

7 MR. MAZUREK: If you have any particular inquiries
8 as you go to work --

9 THE COURT: I pretty much explored what is on my
10 mind, by and large anything.

11 Else you wish to say, Mr. Edelman, concluding
12 comments? Mr. Mazurek? Good to see you in court.

13 I'll try to get a decision out before Christmas.

14 MR. EDELMAN: Thank you, Judge.

15 MR. MAZUREK: Thank you, Judge.

16 THE COURT: The next conference is January 16 at
17 2:30, I understand. So we'll see you at that time for sure.

18 (Whereupon, the matter was concluded.)

19 * * * * *

20 I certify that the foregoing is a correct transcript from the
21 record of proceedings in the above-entitled matter.

22 Rivka Teich, CSR RPR RMR FCRR
23 Official Court Reporter
24 Eastern District of New York
25

Rivka Teich CSR, RPR, RMR FCRR
Official Court Reporter